

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
. Case No. 24-10070 (BLS)
TERRAFORM LABS PTE. LTD., .
. .
. Courtroom No. 1
. 824 Market Street
Debtor. . Wilmington, Delaware 19801
. .
. Tuesday, March 5, 2024
. 2:45 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: Ronit Berkovich, Esquire
WEIL, GOTSHAL & MANGES, LLP
767 Fifth Avenue
New York, New York 10153

-and-

Tania M. Moyron, Esquire
DENTONS
601 South Figueroa Street
Suite 2500
Los Angeles, California 90017

(APPEARANCES CONTINUED)

Audio Operator: Dana L. Moore, ECRO

Transcription Company: Reliable
The Nemours Building
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302)654-8080
Email: gmatthews@reliable-co.com

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APPEARANCES (CONTINUED):

For the U.S. Trustee: Linda Richenderfer, Esquire
UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
J. Caleb Boggs Federal Building
844 King Street
Suite 2207, Lockbox 35
Wilmington, Delaware 19801

For the Official
Committee of

Unsecured Creditors: David R. Hurst, Esquire
MCDERMOTT WILL & EMERY, LLP
The Brandywine Building
1000 North West Street
Suite 1400
Wilmington, Delaware 19801

-and-

Colin T. West, Esquire
WHITE & CASE, LLP
1221 Avenue of the Americas
New York, New York 10020

Aaron Colodny, Esquire
555 South Flower Street
Suite 2700
Los Angeles, California 90071

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1 (Proceedings commenced at 2:45 p.m.)

2 THE CLERK: All rise.

3 THE COURT: Please be seated.

4 Ms. Berkovich, good afternoon. Welcome. Good to
5 see you.

6 Mr. West, good to see you. It's been awhile.

7 MR. WEST: Nice to see you.

8 MS. BERKOVICH: Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 MS. BERKOVICH: Ronit Berkovich from Weil, Gotshal
11 & Manges, for the debtor Terraform Labs Pte. Ltd. I'm joined
12 here today by my colleagues Jared Friedmann, Christine
13 Calabrese, and Gavin Andrews, as well as Zach Shapiro from
14 the Richards Layton firm.

15 We also have in the courtroom today, from Dentons
16 US, the debtors proposed special litigation counsel, Samuel
17 Maizel, Tania Moyron, and Mark Califano.

18 THE COURT: Very good. Welcome, all.

19 MS. BERKOVICH: As Your Honor would have noted,
20 Mr. Califano is the declarant in respect of the debtor's,
21 both the debtor's motions.

22 So thank you for making time for us this
23 afternoon. Your Honor, we filed a revised agenda on the
24 docket at 146.

25 THE COURT: I have it.

1 MS. BERKOVICH: Before we begin with the contested
2 matters on the docket, I thought it would make sense to deal
3 with the other matters on today's agenda.

4 THE COURT: Sure.

5 MS. BERKOVICH: First, in respect of the Treasury
6 management motion, Docket 21, the debtor has agreed with the
7 SEC to adjourn consideration of the final relief until the
8 omnibus hearing of April 18th that's on the agenda. So we're
9 not seeking any relief today with respect to the Treasury
10 management motion and we intend to continue to operate,
11 pursuant to the interim order at Docket 40.

12 We've been working with the Creditors Committee
13 with their comments on the order and we'll continue to do so.
14 We're confident that we can get to a resolution and we might
15 submit that on -- under certification of counsel, if
16 necessary.

17 THE COURT: Very good.

18 Ms. Richenderfer, good afternoon.

19 MS. RICHENDERFER: Good afternoon, Your Honor.
20 Linda Richenderfer for the Office of the United States
21 Trustee.

22 I apologize to counsel for interrupting. I just
23 wanted the Court to know that the debtor has opened up a bank
24 account with a UDA bank, which is why we weren't troubled by
25 just continuing it, because under the interim order, they had

1 so many days to meet the requirements. They've already met
2 that requirement; they've opened up the bank account. And so
3 adjourning it until another day for the final hearing was
4 okay the U.S. Trustee's Office.

5 THE COURT: Very good. Thank you,
6 Ms. Richenderfer.

7 MS. BERKOVICH: Thank you, Ms. Richenderfer, for
8 sharing that good news. We now have a bank account for the
9 first time in years. We're very happy.

10 With respect to the wages motion, we received
11 informal comments from the Committee and U.S. Trustee, and we
12 just filed the final under certification of counsel just
13 prior to the hearing. I don't have the docket, but the wage
14 motion is Docket 20 and the interim wages order is Docket 35.

15 THE COURT: Very good. I haven't seen that yet,
16 but I'll review that and I expect that we'll get that order
17 entered today.

18 MS. BERKOVICH: Thank you, Your Honor.

19 There are a few more administrative motions filed
20 that are reflected towards the end of the agenda. We propose
21 to deal with them at the end of the hearing --

22 THE COURT: Okay.

23 MS. BERKOVICH: -- since we have a packed agenda.
24 I'll just say that with respect to the motion to seal, we did
25 resolve the issues with the U.S. Trustee's Office.

1 THE COURT: Great.

2 MS. BERKOVICH: Okay. So there's two key
3 contested matters going forward today, the Dentons retention
4 application at Docket 60 and the debtor's motion to pay
5 certain amounts in furtherance of litigation at Docket 61.
6 We received objections from the SEC and UST in respect of the
7 Dentons retention at Dockets 86 and 103, and with respect to
8 the litigation payment motion can at Dockets 87 and 104, last
9 night, the Committee filed a preliminary objection to both,
10 the motion and application and requested an adjournment of
11 the hearing at Docket 140.

12 The debtors filed replies to the objections at
13 Dockets 143 and 142, but the UCC's objection was filed at the
14 same time that we filed the reply, so we'll address that
15 orally at the hearing.

16 THE COURT: Okay.

17 MS. BERKOVICH: I suggest that we proceed as
18 follows. I'd like to provide the Court a brief update of the
19 business since the last time we were before the Court. We
20 can then address the Committee's motion to adjourn. I'll
21 then have Mr. Maizel handle the Dentons retention
22 application, and then I will present the litigation payments
23 motion.

24 THE COURT: Very good.

25 MS. BERKOVICH: Okay.

1 THE COURT: That makes sense.

2 MS. BERKOVICH: Okay. So, first, Your Honor,
3 we're pleased to report that the company's business has been
4 doing well since the filing. There have been no major
5 hiccups, and in addition to preserving the value of the
6 business operations, the debtor has been focused on
7 preparation for the SEC trial, which now begins in less than
8 three weeks. As Your Honor can imagine for a litigation of
9 that complexity and magnitude and importance, it's all hands
10 on deck for both, the trial team and the people at the
11 company with a role in the trial.

12 One big development since we were last before the
13 Court is the appointment of a Creditors Committee last week.
14 And I have some things to say about that, but I did agree
15 that I would let my colleague from the McDermott firm address
16 the Court about the Committee first.

17 THE COURT: Very good.

18 Mr. Hurst, good afternoon. Good to see you.

19 MR. HURST: Good afternoon, Your Honor.

20 David Hurst from McDermott Will & Emery, on behalf
21 of the Official Committee of Unsecured Creditors.

22 Your Honor, the Committee was appointed on
23 Thursday, so the 29th of February, and that same day,
24 selected its counsel, White & Case and McDermott. With me in
25 the courtroom today from White & Case, Mr. Colin West and

1 also Aaron Colodny -- excuse me for the mispronunciation;
2 both have been admitted *pro hac vice* in the case.

3 Unless Your Honor has any questions for me, I just
4 wanted to turn it over to my colleagues from White & Case to
5 make a brief introduction for the Committee.

6 THE COURT: Of course.

7 MR. HURST: Thank you, Your Honor.

8 THE COURT: Mr. Colodny, welcome, sir.

9 MR. COLODNY: Good afternoon, Your Honor. Aaron
10 Colodny from White & Case, on behalf of the Official
11 Committee of Unsecured Creditors. It's good to be back in
12 Delaware.

13 I'm joined by my partner Colin West and co-counsel
14 David Hurst of the McDermott firm. Two of our lead
15 attorneys, Chris Shore and Greg Pesce, couldn't be here today
16 due to family commitments and the fact that we were just
17 retained on Thursday.

18 The UCC immediately swung into action. It
19 consists of two individuals and the litigation administrator
20 for Celsius, who is a crypto company who filed for
21 Chapter 11, following the (indiscernible).

22 THE COURT: That's in front of Judge Glenn, right?

23 MR. COLODNY: Correct.

24 THE COURT: Okay.

25 MR. COLODNY: And we confirmed a plan -- the end

1 of January, it went effective.

2 We have not yet been able to retain a financial
3 advisor, but hope to do that this week.

4 Since we were appointed, we've been drinking from
5 a firehose. No doubt, these cases are complicated and the
6 relief that has been requested is complicated. We have
7 worked our best to digest the pleadings and the transactions
8 that are implicated by the motions that are before Your Honor
9 today.

10 We met with the debtor's counsel the day we were
11 retained to get up to the speed as fast as possible. Dentons
12 also made time for us on Saturday morning to discuss the
13 litigation and the motion to retain them.

14 We also worked with the debtors cooperatively to
15 address comments to the wages motion and, I hope, the
16 Treasury management motion shortly.

17 And as you have seen, Your Honor, we requested a
18 short adjournment of the Dentons retention application and
19 the motion to pay litigation expenses so that we can do some
20 basic diligence to better understand the debtor's reasons for
21 moving forward with that litigation. I'm happy to take that
22 up whenever you would please or let Ms. Berkovich talk about
23 it.

24 THE COURT: I think Ms. Berkovich was providing a
25 status report. If she was concluded with her status report,

1 then I think in the agenda that you had laid out, it would be
2 the Committee request. If you still have other items, then
3 I'd be happy to hear and then we'd circle back. Seeing the
4 Committee request for an adjournment, that's sort of a gating
5 question this afternoon.

6 MS. BERKOVICH: Yes, Your Honor.

7 Before we get to the request for an adjournment, I
8 did want to give the debtor's views about the Committee
9 itself, because I think this is very important. You know,
10 the fact that the Committee was appointed six weeks into the
11 case and just a few days before the second day hearing has
12 caused some issues, which we'll get to. But the timing is
13 not even our biggest issue with the UCC, you know, which I'll
14 describe shortly.

15 So as Mr. Colodny said, the debtor has done what
16 it can to try to get the UCC up to speed. We set up two
17 calls with White & Case as soon as they reached out to us.
18 We provided documents they requested, to the extent
19 available, relying on their assurances of confidentiality,
20 and we've worked with them on their comments to the first day
21 orders.

22 But, Your Honor, our problem is the debtor
23 believes that the Unsecured Creditors Committee in this case
24 is illegitimate, both with regard to its membership and its
25 conduct to date. This is not something that we say lightly

1 or something that I've ever said to a Court before, but the
2 situation here is unprecedented.

3 The debtor is considering what actions may be
4 available for it in this regard, but I thought it was
5 important to let the Court and all parties know our views up
6 front. To start with, the debtor filed a top-creditor list,
7 revised, at Docket 56. That listed 29 legitimate, general
8 unsecured creditors.

9 It's our understanding that the U.S. Trustee sent
10 questionnaires to all those creditors and that none of them
11 wanted to serve on the Creditors Committee, maybe with the
12 possible exception of one who's a critical vendor. The best
13 explanation is that these legitimate general unsecured
14 creditors reviewed the debtor's first day papers and agreed
15 with the debtor's vision and strategy. They understand that
16 their path to a full recovery is for the debtor to do what it
17 has been doing: focusing on its business and putting up its
18 strongest case to defeat the SEC's wrong claims. These real
19 creditors decided -- declined to serve on a UCC, thinking one
20 would not be additive.

21 Of the three members of the UCC, not one was on
22 our creditor list and not one of them had a pending, filed
23 claim against the debtor, as of the petition date. Two of
24 them were total strangers to the debtor and our understanding
25 is that all of them -- all of their claims, if they have any,

1 had the same underlying basis as the SEC's claims:
2 basically, securities fraud claims relating to Luna Classic
3 and UST. And the third number is an individual and he did,
4 at one point, join a class-action lawsuit asserting
5 securities law claims, but that lawsuit was dismissed and
6 I'll get to that.

7 There's two clear conclusions from this set of
8 facts: first, if these UCC members have any claims at all,
9 their claims would be subordinated to general unsecured
10 claims under Section 510(b) of the Bankruptcy Code, as
11 they're based on the purchase and sale of securities; second,
12 and much more importantly, these UCC members' only prayer of
13 having any allowed claim at all, even a subordinated claim,
14 is if the debtor loses in its defense against the SEC
15 enforcement action.

16 As I mentioned last time, the debtor's primary
17 basis for appeal is that their tokens are not securities. We
18 feel very good about our position on that issue for the
19 reasons that I explained to the Court last time. Our chances
20 of winning have only gone up since then, given other
21 litigation on the same issues have been in other federal
22 courts.

23 If we prevail on that issue on appeal, then all
24 three UCC members could not possibly have a claim. Because
25 their natural incentive is to do everything they can to

1 sabotage the debtor's defense to the litigation, and you can
2 see that in action now.

3 This UCC is constitutionally incapable of
4 representing the interests of real creditors with real,
5 general unsecured claims like those in our top-30 creditor
6 list. It's effectively a committee of disputed, unliquidated
7 claims that can only possibly be valid if the debtor loses on
8 its existential SEC litigation if the SEC gets to keep its
9 claim against the company, no matter how large it might be.

10 So the incentive is to throw away the company's
11 chances of reorganization and side with the SEC. This is, of
12 course, antithetical to Chapter 11 goals.

13 The UCC doesn't care that an SEC win will destroy
14 the company and its chances of reorg. They don't care if an
15 SEC win would be devastating to all stakeholders, including
16 general unsecured creditors. For these UCC members, getting
17 even a .001 percent recovery on a subordinated claim against
18 an estate that's dwarfed by an SEC claim is better than a
19 scenario where the debtor prevails on the SEC litigation,
20 reorganizes, and preserves value for everyone, but defeats
21 the (indiscernible) securities fraud claimants.

22 So these positions that this UCC is incentivized
23 to take are not what will max value of the company and
24 recovery to GUCs. The UCC's members' interests are
25 diametrically opposed to the interests of general unsecured

1 cases. We're aware of no other case where a UCC consisted
2 solely of subordinated creditors. We're also aware of no
3 case where the UCC consisted solely of members with disputed,
4 unliquidated claims that had not even been filed as of the
5 petition date, but could have been.

6 Even in the mass tort context, you have committees
7 with unliquidated claims, but most of the people, or at least
8 some of them, filed lawsuits against the debtor prepetition.

9 The fact that this UCC's interests are adverse to
10 maximizing value is not just theoretical. They have shown it
11 to all of us already. The actual position they take in their
12 papers is that the debtor should stop defending itself in the
13 SEC litigation. They want us to default, lose the company,
14 lose our ability to reorganize, and give all our assets away
15 to the UCC with its asserted claim of more than \$40 billion.

16 How do I know it's \$40 billion? It says so right
17 there in paragraph 1 of the SEC's amended complaint and those
18 are just their asserted damages, not even including
19 penalties.

20 Defaulting and letting the SEC have a claim cannot
21 possibly be in the interests of real unsecured creditors or
22 any legitimate stakeholder here. The same thing with
23 preventing the debtor from being able to reorganize.

24 TFL, its community, its employees, and its real
25 creditors deserve better. The UCC's position that the debtor

1 is doing something nefarious by vigorously defending itself
2 in litigation brought by the government, litigation that the
3 debtor strongly believes has no merit, is no less than
4 absurd.

5 The first time I've ever seen a UCC or any
6 creditor argue that a debtor defending itself against a
7 large, let alone \$40 billion claim, is cause for concern.
8 It's the Twilight Zone, but now that I've connected the dots,
9 the Court can see why this Creditors Committee filed that
10 pleading.

11 Beyond the conflict issue, we have other
12 indications about how outlandish the UCC's positions are.
13 Consider the following: Celsius has been around for a long
14 time. The White & Case firm has been representing the
15 Celsius creditors and litigation trust for a long time. They
16 now claim to have a creditor with a large claim against TFL.
17 That came as news to us. They never asserted it before, but
18 okay, taking them at their word.

19 TFL has been in Chapter 11 since January 21st. If
20 Celsius had a legitimate, large claim, a legitimate interest
21 in this case, and Celsius and White & Case believed that the
22 debtor had been pursuing the wrong strategy, the one
23 announced at the very beginning of this case, then why didn't
24 they make an appearance before March? They could have
25 appeared in January. Why didn't they file an objection to

1 the litigation payments motion by the February 27th objection
2 deadline? Same question about the Dentons retention
3 application.

4 I know why. It's because they're smart lawyers.
5 They know how far-fetched their arguments are and they don't
6 want to waste their own litigation trust funds pursuing these
7 silly arguments, but they have no problem wasting TFL estate
8 assets on these positions. So only after they convinced the
9 U.S. Trustee to appoint the illegitimate Creditors Committee
10 so the debtor must pay for their costs, did White & Case
11 decide to show up and make these outrageous arguments.

12 From their perspective, even a ridiculous argument
13 is worth a shot if someone else is paying for it. They have
14 nothing to lose. And I'll note that no real creditor has
15 filed objections to any of these motions.

16 From the debtor's perspective, it's a travesty
17 that the estate would pay not only for its own defense of the
18 SEC litigation, which everyone admits is expensive, but for
19 the costs of a party that is seeking to sabotage the debtor's
20 defense of that litigation. The last thing this case needs
21 and this estate needs is an estate-paid representative that's
22 going to side with the SEC on everything and work against the
23 estate's interests.

24 The SEC is well-funded enough. They have
25 excellent lawyers, Mr. Uptegrove and Mister -- and they don't

1 need a big law firm like White & Case and McDermott doing
2 their bidding.

3 This is not, as I said last time, a complicated or
4 large case. There's one debtor, no funded debt, no secure
5 debt, and minimal trade debt. It is inappropriate in our
6 simple case, which, as I mentioned the other day, doesn't
7 have sexy crypto issues you see in cases like FTX, Voyager,
8 and Celsius, and pales in comparison to those cases in terms
9 of size and complexity.

10 We have a UCC that proposes to have the combined
11 law firm firepower of the Celsius UCC, in the form of White &
12 Case, and the Voyager UCC, in form of McDermott Will & Emery.
13 Not only are both of those law firms proposed to represent
14 the UCC, their notices of appearance list no less than 10
15 lawyers spanning the country from Delaware to New York to
16 Miami to Chicago to Los Angeles.

17 So, you know, given our views about the
18 illegitimacy of this UCC, these proposed law firms should be
19 on notice that they may not get retained and they may not
20 receive payment for their spending gobs of money working
21 against the estate's interests.

22 I'd like to spend a few minutes on each of these
23 UCC members. First, Celsius, and --

24 THE COURT: Hang on.

25 MS. RICHENDERFER: Your Honor --

1 THE COURT: Hang on.

2 I think if we're going to head down this path,
3 we're not in a format that the Court is able to do that.
4 Obviously -- I assume it's obvious -- counsel's report to the
5 Court is news to me in terms of the issues and the concerns
6 and positions expressed and they're hardly typical. And you,
7 Ms. Berkovich, noted at the outset that it's neither typical,
8 nor do you make them lightly. I accept that.

9 I think I get your point, and before we expand
10 upon that point, I think I'd like to hear at least from the
11 Office of the United States Trustee --

12 I understand your point.

13 MS. BERKOVICH: Yes, Your Honor.

14 THE COURT: -- and we'll go from there.

15 MS. RICHENDERFER: Your Honor, Linda Richenderfer
16 from the Office of the United States Trustee.

17 I just returned from vacation so, I'm going to try
18 to keep my vacation mode in mind as I make my remarks, but I
19 am just flabbergasted. To quote counsel, there are smart
20 lawyers in this room, and seated at the debtor's table are
21 many of them.

22 Your Honor, we have had so many discussions with
23 the debtor about today's hearing and everything that was
24 going to be covered and their concern that Your Honor
25 wouldn't have enough time to get through the agenda and then

1 I hear this issue brought up, never previewed with us before.
2 Did they like the fact that we appointed a committee? No.
3 But to start to go through these detailed threats, I guess,
4 against the people who came forward and said, We lost money,
5 because when the depegging occurred, there was a huge, huge
6 loss of value by many, many people.

7 And it's not just a securities claim. I don't
8 understand how on the one hand debtors say, These weren't
9 securities, but people who lost money because they bought
10 them are subordinated because they bought securities. I
11 can't figure out how that goes together.

12 It took us weeks to get from debtors, a complete
13 list of who they said were their unsecured creditors. I
14 think it was finally after list number three that we gave up
15 and we said, Okay, now we've got to send out more letters.
16 So, in other words, the reason for the delay was, they kept
17 adding to the list and we kept sending out letters.

18 And we've interviewed people and we interviewed
19 more than the people who are on the committee. And these are
20 people that we determined presented a *prima facie* case of a
21 claim. I mean, we don't sit there and decide who really has
22 a claim; that is the job of the process.

23 But they presented to us information, and now to
24 hear this condemnation and we're going to turn this into a
25 speaking motion on the fly with absolutely no briefing

1 whatsoever, just because somebody is standing up and is
2 willing to say to the debtor that, what about the people who
3 lost all of this money? No different than the other
4 cryptocurrency cases. I'm trying to stay away from the
5 particulars, but, Your Honor, again, if they want to bring it
6 up, that's fine, we have another hearing scheduled in April
7 and I'm sure the Committee will be more than welcome.

8 And everybody takes on a case with a risk that
9 they might not get paid, including Dentons and including Weil
10 and Richards. And I don't understand why -- I understand why
11 they wanted to bring it up, but I don't understand beating
12 the dead horse of what their position is.

13 Their position is clear: they don't think these
14 people really have a claim. Well, then, brief it. We'll
15 respond to the extent we need to, and the Committee members
16 will respond to the extent that they must.

17 But, Your Honor, the process was clean. We
18 interviewed people. We did what we needed to do. It's not
19 unusual to have people with unliquidated, contingent claims
20 on a committee. And as Ms. Berkovich knows, I have been on
21 more tort cases than probably many people, other than
22 perhaps, a couple of the plaintiff's firms, and, Your Honor,
23 the tort claimants' committee is often made up of people who
24 don't have a complaint that has yet been filed. That doesn't
25 mean they don't have a claim; they just haven't filed their

1 complaint yet, because filing of the bankruptcy tolls the
2 statute of limitations.

3 I don't know if Your Honor has any specific
4 questions for me at this point, but we reached out. The
5 people that were used became, all of a sudden, critical
6 vendors, people that were on the list of creditors. The
7 debtor has the right to do it. It happens an awful lot.
8 People who might respond to the request for questionnaires
9 get paid and no longer are available to sit on the committee.

10 But we stand by the three people that we chose to
11 be on the committee, to the extent that they gave us the
12 information proven and correct, we can deal with it then.

13 But I just -- again, I am flabbergasted with all
14 of the communications we've had and with the goodwill, I
15 thought we were working out issues, to come in here and to
16 have this ambush -- I'm sure that Committee will speak to
17 this -- but to have this addressed when never, ever, ever was
18 it brought up before Ms. Berkovich stood here and made her
19 speech to Your Honor.

20 And I think that, you know, litigation by ambush,
21 I didn't think was going to be the course of the day in this
22 bankruptcy case, but, unfortunately, it's beginning to be a
23 trend and this is just one example.

24 THE COURT: Mr. Colodny?

25 MR. COLODNY: Good afternoon, Your Honor. Aaron

1 Colodny from White & Case.

2 I would echo Mrs. Richenderfer's comments;
3 however, I will do it in maybe a milder manner. To say we
4 have been sandbagged is an understatement. We spoke with
5 debtor's counsel on Friday and other then oblique references
6 to do your committee members hold Luna and, you know, why has
7 it taken Celsius a long time to file a claim, we heard none
8 of this. Celsius has been dealing with its own bankruptcy,
9 triggering hundreds of thousands of account holders, and now
10 we are effective, and are asserting our rights but we are not
11 representing Celsius.

12 Our members, three members, were appointed by the
13 United States Trustee to be fiduciaries for unsecured
14 creditors and today we stand here, as a fiduciary for
15 unsecured creditors, questioning the debtor's business
16 judgement to take a bet the company litigation when they
17 don't know what the company is worth. I think that is a
18 perfectly rational position to take and to do on three
19 business days' notice.

20 I don't know, Your Honor, I am quite shocked, to
21 be honest with you, that the hearing would kick off in this
22 manner.

23 THE COURT: Let's turn to your request for an
24 adjournment.

25 MR. COLODNY: Sure. So, Your Honor, as I said, we

1 have requested a brief adjournment from the debtors which
2 they have refused. We understand that they are going to
3 trial on March 25th. Our adjournment is in no way meant to
4 stop the preparations for trial. We have discussed the
5 adjournment with the United States Trustee who has consented.
6 We discussed it with the SEC who stated that they are
7 prepared to move forward today.

8 We requested basic information from the debtors, a
9 13-week cash flow, an estimated budget for the litigation in
10 anticipated weekly fees, information about the value of the
11 debtor's business, information about how they protect their
12 cryptocurrency; and at this point we don't have many answers
13 to that.

14 As I said, and I will say this many times, the
15 company is pursuing a bet the company litigation, they don't
16 know what the wager is and they don't know what the return is
17 after the bet. Instead, they seem willing to take \$70
18 million, put it in a retainer account for their counsel and
19 proceed down a no holds bar litigation path. That is not to
20 say that we can't get comfortable with the prospects for the
21 company, the prospects for the litigation, but on three days'
22 notice it's impossible for any fiduciary with the resources
23 that we have and the information that we have had access to,
24 to stand before Your Honor and make an informed decision
25 about whether to spend \$70 million on a litigation and \$6.2

1 million which is 17 percent of their liquid assets on
2 pursuing that litigation to pay prepetition claims and
3 especially prepetition claims of employees and insiders.

4 We have a number of questions, Your Honor, that
5 haven't been answered and we haven't had time to answer them.
6 So, what we were going to propose was that we adjourn the
7 hearing for a brief period of time, we will not object to
8 Dentons payment of fees between the date of the hearing and
9 whenever we are able to hear the final fee application on a
10 quantum meruit basis subject to the Court's review. There is
11 no reason that if they were prepared to go forward today and
12 the committee were delayed in acting that they should suffer
13 or not be paid for their work moving forward; however, we do
14 have serious questions about their ability and the debtor's
15 ability and decision to pursue this litigation.

16 So, this is not a we are trying to kill the
17 company. We are trying to understand why the litigation is
18 worth pursuing and we don't know right now. So, Your Honor,
19 unless you have any other questions, I believe our request is
20 for a 10-day adjournment and as a condition to that
21 adjournment we would agree not to object to Dentons fees
22 incurred from today's date to the final hearing on a quantum
23 meruit basis subject to Your Honor's review.

24 THE COURT: Ms. Berkovich.

25 MS. BERKOVICH: Yes, Your Honor. I'm sorry that

1 the U.S. Trustee took our views, the debtor's views on the
2 committee as an attack on the U.S. Trustees process. For the
3 record, we have no problem with the process. We have no
4 reason to believe the U.S. Trustee didn't do everything that
5 the office can and should do to form a good committee. And
6 we mentioned to the U.S. Trustee, when we spoke to them on
7 February 15th, that the reasons we did not believe these
8 particular members, who have turned out in the committee,
9 would be good representatives of the general unsecured body.
10 So, we did mention this weeks ago.

11 We just disagree with the decision to appoint
12 these particular members on the committee. And it's not just
13 that they don't have claims, that is not exactly the point,
14 it's sort of the point, but the point is if they have claims,
15 the only way they have claims is if the SEC wins in the
16 litigation. So, their interests are against all other
17 unsecured creditors, the general unsecured creditors would
18 want us to prevail on the litigation against the \$40 billion
19 claim. That is the point, they are conflicted.

20 On the adjournment I think it is important, when
21 Your Honor considers the UCC's request for adjournment, to
22 take into account what we said about their incentive to
23 sabotage the litigation because that is what an adjournment
24 would do. And I want to look at the very first paragraph of
25 their preliminary statement where they say that there is all

1 these unanswered questions and I want to go through each of
2 these because I think answering them will help explain why
3 the adjournment doesn't make sense.

4 A few of these they asked and already answered
5 before they filed this. A few others they didn't bother to
6 ask us, although we told them we were available for
7 questions. A few more are puzzling, but we will answer them
8 anyway just to be complete.

9 So, first they say what is the enterprise value of
10 the debtors, Mr. Colodny said this of the debtors ongoing
11 business, and does that enterprise value support the bet the
12 company approach the debtor has taken with respect to the
13 myriad of litigation against it.

14 THE COURT: I'm sorry, what paragraph are you on?

15 MS. BERKOVICH: This is on Paragraph 1, page 2 the
16 preliminary statement. This is question A.

17 THE COURT: Okay. Right.

18 MS. BERKOVICH: We don't know the enterprise
19 value. It is unusual except in a prepackaged Chapter 11 case
20 to have an enterprise value known at the very beginning of
21 the case. We have to imagine that experienced bankruptcy
22 counsel like White & Case and McDermott Will & Emery know
23 this.

24 Second, one doesn't need to know the enterprise
25 value to know that spending funds to dispend against the \$40

1 billion claim is a good use of resources. The cost of
2 litigation will take their \$70 million number, although it's
3 not exactly right, is certainly less than \$40 billion.

4 Third, it is certain that if the SEC prevails
5 fully there will be no enterprise value because the SEC will
6 take it all. The SEC is seeking disgorgement of ill-gotten
7 gains and nothing less than the destruction of the company.
8 An adverse decision will make the enterprise value zero,
9 destroy the business.

10 Fourth, if the debtor defaults in the litigation
11 or loses that is a final judgment. Other parties can use the
12 final judgment to pursue claims. Others, such as Celsius, and
13 Mr. Golder, and similar securities plaintiff types. So, the
14 SEC gets everything and the claims pool gets larger, much
15 larger. Not hard to conclude that defending against the
16 litigation is worth it.

17 Fifth, the way the UCC phrased this question and
18 Mr. Colodny said also, it's as if the debtor is using all its
19 assets to pursue company litigation. The debtor is the
20 defendant in all this litigation, not the plaintiff. It
21 didn't want this. Its doing what every single other
22 defendant in America does when its accused of something that
23 it believes to be wrong.

24 Sixth, I will say something about the enterprise
25 value; it is potentially very high, but only if the company

1 survives to support this blockchain. The market is currently
2 showing that it believes in the company's business.

3 Just a few examples. At launch the network value
4 was \$200 million. It's now worth \$800 million. Significantly
5 more than the treasury spend to support the blockchain.
6 Somebody who had Luna II at the outset would now have value
7 that is worth four times as much.

8 Even since the filing the price of Luna II has
9 gone up quite a bit. When we filed it was 57 cents. Last
10 week it was 73 cents. The current pricing is trading well
11 over \$1 dollar. It's a 150 percent increase since filing.

12 Similarly, at filing, Luna II market
13 capitalization was approximately \$410 million or \$700 million
14 on a fully diluted basis. As of today, that number is as
15 high as \$940 million or \$1.5 billion. More than a 100 percent
16 increase since the petition date.

17 The dollar value of Luna II held in the debtor's
18 treasury has likewise increased in price. The company's
19 valuable applications, which we spoke about last week, work
20 only on the Terra blockchain and would only have value if the
21 Terra blockchain is thriving.

22 Seventh, the UCC wants a two week adjournment so
23 it can determine enterprise value with no banker. That is
24 never going to happen in two weeks. Whatever purpose the
25 adjournment serves it certainly cannot be to figure out the

1 enterprise value. And I will discuss this a little bit
2 later.

3 Taking the company's resources away from trial
4 preparation on the eve of trial to focus on enterprise value
5 now would be disastrous to the trial preparation, but, of
6 course, that is the point to make it more likely that the
7 debtor will lose the trial.

8 Okay, let's go to the next question. What is the
9 impact, including on unsecured creditors recovery, of an
10 adverse ruling in the SEC enforcement action.

11 THE COURT: I am going to interrupt you.

12 MS. BERKOVICH: Yes.

13 THE COURT: I think we are getting substantially
14 ahead of ourselves on two different paths. This is,
15 effectively, a second day hearing. I have a committee that
16 was recently appointed and I have serious challenges raised
17 by the debtor, which I take seriously, but I have -- but I
18 don't believe that it is a matter that I can deal with or
19 dispose of today in a way that advances this process.

20 I say that because what the debtor is asking is
21 that I conclude that the committee, for lack of a better
22 word, is improperly and illegitimately created and,
23 therefore, I should disregard the input or position of the
24 dually appointed statutory fiduciary for all unsecured
25 creditors under Bankruptcy Code Section 1102. I have,

1 obviously, the response of the Office of the United States
2 who is the appointing agent, the appointing authority for a
3 committee.

4 I don't have any record in front of me. I have,
5 on rare occasion, dealt with motions to disband or change
6 membership of a committee. There is typically a record
7 associated with that. I am not faulting counsel because the
8 committee was only appointed and I get your concerns, but I
9 don't believe that I am in any position today to make a
10 decision that I will discount or disregard concerns
11 articulated by a committee because they are potentially
12 illegitimate.

13 Similarly, we talk about the questions that a
14 committee has raised. Some of those may be good questions,
15 some of those may be bad questions, they are questions put
16 into a 20-page pleading created by a committee that was
17 appointed three days ago. We are going to carry this motion
18 to next week and I will give you my reasons. And I don't
19 want either side to attribute more significance to the
20 Court's decision to adjourn this matter than it deserves.

21 It does not seem to me that this matter is fully
22 and completely developed. Actually, I was considering
23 adjourning the matter prior to receiving the committee's
24 objection. I don't fault the debtor for not consenting to
25 the adjournment. The intensity of effort leading up to trial

1 is something that is not a secret to this Court and the
2 debtors need and desire to engage counsel to get the order of
3 retention and to move forward is obvious.

4 Both the Securities Exchange Commission and the
5 United States Trustee have both raised, at a minimum,
6 questions with respect to the engagement, prior payments,
7 eligibility, honking big retainer, and then the other issues
8 with respect to the payment of the litigation claims. I
9 would note that both the SEC and the United States Trustee
10 included in their objection to the litigation payment motion
11 at least some concepts that would be responsive to their
12 concerns. I make no comment on that dialog, but that dialog
13 needs to occur.

14 I don't believe that I am in a position with a
15 committee objection and a request for an adjournment that is,
16 from my point of view, routine. A committee -- by way of
17 course analogy, this isn't a bid procedures hearing, but it's
18 often that a committee's first official act is to request an
19 adjournment of a bid procedures hearing which the Court
20 almost always grants in order to allow those parties an
21 opportunity to get their arms around it.

22 Debtors often express concern and frustration that
23 the committee is putting at risk the reorganization, whatever
24 their motives and motivations may be. And, obviously, you
25 know, I take seriously the concerns that are expressed and it

1 was hardly typical to get that kind of a report. But I don't
2 think it would be either appropriate or procedurally proper
3 for me to require the committee to stand up as its first
4 official act and defend its existence, again, on no record
5 before me and with no submissions in briefing.

6 So, I don't think that I can deal with that
7 question and I have a request for an adjournment. That is
8 the question that is in front of me and I am going to grant
9 that. I will carry this motion to either Monday or Tuesday of
10 next week.

11 MS. BERKOVICH: Your Honor, may I address the
12 Court?

13 THE COURT: Yes.

14 MS. BERKOVICH: We would ask that the Court
15 reconsider that.

16 THE COURT: No.

17 MS. BERKOVICH: We would like to put on evidence
18 about the --

19 THE COURT: No.

20 MS. BERKOVICH: -- harm.

21 THE COURT: No.

22 MS. BERKOVICH: Could I have one minute please?
23 We are three weeks away from trial. The trial team and the
24 company have already been really distracted by the bankruptcy
25 issues, and by issues relating to the retention, issues

1 relating to the questions about the litigation motion.

2 The Dentons team and the company needs to be
3 working 24/7 on trial prep and this will be -- the evidence
4 we would like to show you, even on one week adjournment, will
5 very much negatively impact the company's trial prep and our
6 position in the SEC litigation.

7 THE COURT: I appreciate your candor and I will be
8 candid with you: I am not certain, on today's record,
9 irrespective of the evidence that you would adduce, that I
10 would be in a position to grant the motion. I am not certain
11 that I would deny it, but with the issues that have been
12 raised by the SEC, by the United States Trustee and by a
13 committee that has also said not only do we have issues, but
14 we don't have answers to a lot of foundational questions.

15 I don't know that I would be in a position after
16 hearing your evidence today to grant that motion and resolve
17 those concerns. I am -- the committee has asked for 10 days
18 and I agree, I think that is too long. We are in a -- it is
19 a difficult situation. I don't make this adjournment lightly,
20 but I am not prepared to do this. I think the committee has
21 asked for an adjournment. I have asked, in my making my
22 comments in granting the adjournment, that the parties not
23 attribute more significance to my comments today.

24 This case is, again, kind of an unusual case.
25 Issues were raised by the Office of the United States Trustee

1 at the first day which I noted and you noted were not today
2 issues. Arguably, they're not really today issues today
3 either, but this is an unusual case and a committee has shown
4 up asking for some more time in order to get its arms around
5 it.

6 At this point I am not prepared to ascribe ill
7 designs on the committee's request. As a matter of fact, I
8 regard the committee's -- I regarded it as pretty routine.
9 Again, I don't want to ascribe more significance to that than
10 it deserves. We have done a lot of bankruptcy cases, I found
11 out that a committee got appointed, and I was kind of
12 expecting that there would be something from the committee
13 saying we are still trying to get our arms around this.

14 I don't know and I don't think that a record can
15 be developed today that would allow me to say that I am going
16 to completely disregard those folks. In addition, you know --
17 I have said enough. This should be carried. This case is
18 six weeks old which I recognize in the lead up to the trial
19 is a long time, but it is not a long time in the life of a
20 case.

21 So, this is, effectively, the second hearing that
22 we are having in this case, I think. The issues that are
23 raised by the SEC, by the United States Trustee and by the
24 committee about where we are going with this case are hardly
25 typical. That doesn't mean that I won't find that its

1 appropriate and we need to move forward. I get the concern
2 both with respect to being ready for the litigation and also
3 being the debtor's candid statement that the litigation is
4 existential. I get it. I understand that position.

5 I am not prepared to move forward today and I
6 believe that we should adjourn this matter. We are already
7 on the calendar for next Tuesday. If there is a difference
8 between Tuesday and Monday, I would hear you on Monday.

9 MS. BERKOVICH: Tuesday it is.

10 THE COURT: All right. Then I would suggest that
11 we move the hearing. We are on for 11:30 a.m. and I would
12 suggest that we move the hearing up to 10 a.m., and your
13 agenda can reflect that.

14 The parties are in discussions, some, and I take
15 that only simply from reports from Ms. Richenderfer as well
16 as counsel about drinking from a firehose, the phrase that
17 committees always use. That's fine. And it may be that
18 there are other significant issues that I am going to need to
19 deal with in a week's time, I get it. And if some of those
20 relate to the providence of this committee so be it, but I
21 don't think that we can do it from the podium on a speaking
22 objection.

23 Again, I don't want to sound like a broken record
24 on this, and I have made comments in response to your request
25 for reconsideration, which I respect, but I am going to

1 decline it for the reasons I have given you. I would ask that
2 the parties, in your negotiations, engage without ascribing
3 real significance to my decision to adjourn. I have a case
4 that's six weeks old, I have a committee that was appointed
5 just a few days ago, and I have significant complex issues to
6 a retention that is critical to the prosecution of the case
7 as described by the debtors of this reorganization and they
8 have asked for a short adjournment. I have granted it. That
9 is the only question that I have answered today.

10 I will look forward to hearing from the parties,
11 but I do not believe that it would be appropriate to move
12 forward with either of the motions today and I will carry
13 them to 10 a.m. on Tuesday. Are there any questions?

14 MS. BERKOVICH: Just a moment, Your Honor.

15 THE COURT: Of course, take your time.

16 (Pause)

17 MS. BERKOVICH: Your Honor, we noted that there
18 were some housekeeping motions that we would deal with at
19 the -- we will just deal with them on Tuesday.

20 THE COURT: Yeah, if there are issues, they were
21 about leave for a reply, and sealing, and some other stuff. I
22 assume that they are routine and if they can be entered, I
23 will enter them. If there is an issue with respect to sealing
24 or something we will deal with it, but I think that our rules
25 provide that something that is filed under seal remains under

1 seal until the Court deals with it. So, that should be fine.

2 Ms. Richenderfer.

3 MS. RICHENDERFER: Thank you, Your Honor. The
4 only thing I would mention is that I know that the U.S.
5 Trustee has come to an agreement with the debtor on the
6 sealing -- unsealing, I should say, of a good amount of the
7 information that is in the engagement letter. I don't know
8 whether or not there is any issue with the other parties of
9 interest, but I would request that a COC be entered -- I'm
10 sorry, be submitted so that the engagement letter, in full,
11 except for three minor points be on the record so that it is
12 public and people in interest can see what the engagement
13 letter says.

14 THE COURT: Has the debtor agreed to that?

15 MS. RICHENDERFER: Your Honor, we came to an
16 agreement out in the hallway. So, I don't know whether or
17 not perhaps they have changed their minds.

18 THE COURT: Welcome.

19 MS. MOYRON: Good afternoon, Your Honor. Tania
20 Moyron of Dentons US LLP, proposed special litigation
21 counsel.

22 The statements are accurate, Your Honor. We
23 reached an agreement in the hallway with respect to the
24 engagement letters. We will unredact all of the language
25 except for page 3 of the November 2023 engagement letter.

1 THE COURT: Okay.

2 MS. MOYRON: There are three numbers, those will
3 remain redacted. The Office of the United States Trustee has
4 agreed to that.

5 THE COURT: And that is fine with the U.S.T.,
6 okay. That is fine. If that gets filed under a COC or is
7 otherwise on the docket by agreement of the parties that is
8 fine with me.

9 As to the housekeeping issues, again, if there is
10 consent and consensus then I would either enter orders
11 approving that or we can deal with it on Tuesday at 10 a.m.

12 MS. BERKOVICH: Thank you so much, Your Honor.

13 THE COURT: Any other matters?

14 (No verbal response)

15 THE COURT: With that we are adjourned. Thank
16 you, counsel. See you next week.

17 (Proceedings concluded at 3:33 p.m.)

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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling

March 5, 2024

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Mary Zajackowski

March 5, 2024

Mary Zajackowski, CET-531

Certified Court Transcriptionist

For Reliable